

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STRATEGIC INTENT, LLC, d/b/a
PALOUSE FALLS BREWING
COMPANY, JEFFREY A.
GREENE, and MELINDA L.
GREENE,

Plaintiffs,

v.

STRANGFORD LOUGH
BREWING COMPANY LIMITED,
ROBERT LITTLE and JANE DOE
LITTLE, ANTHONY DAVIES and
TRACEY DAVIES, MICHAEL
STANLEY ROSS and JANE DOE
ROSS, JAMES STEPHENSON and
JANE DOE STEPHENSON, and
WAYNE STRIPP and JANE DOE
STRIPP,

Defendants

NO. CV-09-309-RHW

**ORDER DENYING
DEFENDANTS' MOTIONS FOR
PROTECTIVE ORDERS**

Before the Court are Defendants' Motions for Protective Orders (Ct. Recs. 28 and 37) and Motions to Expedite Hearing (Ct. Recs. 25 and 34). Also before the Court is Defendants Stephenson and Stripp's Motion to Strike (Ct. Rec. 57) and Motion to Expedite Hearing (Ct. Rec. 55). These motions were heard on an expedited basis without oral argument.

BACKGROUND

This litigation arose out of a business deal for exclusive license between an Irish brew company, Strangford Lough Brewing Company Limited ("SLBC"), its North American branch office ("SLBC NA"), and Plaintiffs, the licensees in

1 Washington. Initially, Plaintiffs assert that SLBC NA made material
2 representations to them regarding the source of the beer, and the benefits of the
3 business, which induced Plaintiffs to consider the prospect of a business license
4 with SLBC. Eventually, Plaintiffs entered into an Exclusive Microbrewer License,
5 Equipment, and Wort Supply Agreement with SLBC, which granted Plaintiffs
6 exclusive rights to production of the Irish beer in Washington, California, Idaho
7 and Oregon. The contract also called for a shipment of brewery equipment to
8 Plaintiffs' place of business in Pullman, Washington, which was to be assembled
9 immediately and production started shortly thereafter.

10 Plaintiffs' Complaint asserts that several months after the initial production,
11 the equipment began to fail and the SLBC and SLBC NA did not provide
12 appropriate replacement equipment. Furthermore, the material information
13 regarding the origin of the beer ingredients and recipes could not be used on U.S.
14 labels because they include misrepresentations about the product itself.

15 Plaintiffs filed suit for breach of contract, seeking the expenses incurred in
16 Plaintiffs' production and continued maintenance of the beer which is allegedly
17 unmarketable. Plaintiffs assert that SLBC NA and Defendants Stephenson and
18 Stripp are liable because they held the rights to license the beer in the North
19 American territories, and were the actors who made the material representations
20 inducing Plaintiffs to enter the agreement. SLBC and Defendants Little and Davies
21 are claimed to be liable because they knew of the material misrepresentations made
22 by SLBC NA, and added to the misrepresentations during contract negotiations.
23 Additionally, there is a claim for unilateral mistake by Plaintiffs based on the
24 misleading information provided to them regarding the beer product. Finally,
25 Plaintiffs make claims for breach of Franchise Protection Act, Consumer
26 Protection Act, and other contract claims.

27 **DISCUSSION**

28 Two motions for protective orders have been filed with the Court, asking the

1 Court to preclude Plaintiffs from requiring Defendants to travel from Ireland
 2 (Defendants Davies and Little) and Canada (Defendants Stephenson and Stripp) in
 3 order to attend depositions.

4 **I. Deposition in the United States**

5 The Court has wide discretion to control discovery, which includes the
 6 ability to determine the site of depositions. *Hyde & Drath v. Baker*, 24 F.3d 1162,
 7 1166 (9th Cir. 1994). Federal Rule of Civil Procedure (“FRCP”) 26(c) provides for
 8 protective orders to be issued by the court. The pertinent language of the rule is:

9 A party or any person from whom discovery is sought may move for a
 10 protective order The court may, for good cause, issue an order to
 11 protect a party or person from annoyance, embarrassment, oppression, or
 undue burden or expense, including one or more of the following . . .

12 (B) specifying terms, including time and place, for the disclosure or
 discovery;

13 (C) prescribing a discovery method other than the one selected by the party
 seeking discovery

14 ““On motion for protective order, the court should balance the costs and burdens to
 15 each side.”” *United States v. \$160,066.98 from Bank of America*, 202 F.R.D. 624,
 16 626 (S.D. Cal. 2001) (citation omitted).

17 Under the FRCP, the party seeking the deposition sets the place of the
 18 deposition, “subject to the power of the court to grant a protective order.”
 19 *\$160,066.98 from Bank of America*, 202 F.R.D. at 627. However, there is a
 20 presumption that a “defendant will be examined at his residence or place of
 21 business or employment.” *Id.* If the defendant is a corporation, there is a general
 22 rule that “the ‘deposition of a corporation by its agents and officers should
 23 ordinarily be taken at its principal place of business.’” *Thomas v. Int’l Bus. Mach.*,
 24 48 F.3d 478, 483 (10th Cir. 1995). The policy behind the presumption is that the
 25 Plaintiff has chosen the forum in the first instance, thus cannot complain when
 26 discovery must be taken at “great distances from the forum.” *Farquhar v. Shelden*,
 27 116 F.R.D. 70, 72 (E.D. Mich. 1987). Often there are exceptions based on the
 28 circumstances of the case, which would encourage a change in location of the

1 deposition. *\$160,066.98 Bank of America*, 202 F.R.D. at 627. The court is
2 instructed to balance the good cause showing of the party asking for a protective
3 order against the need to conduct the deposition in the place the party seeking
4 discovery chose. *See \$160,066.98 from Bank of America*, 202 F.R.D. at 629.

5 A North Carolina district court laid down several factors the court should
6 consider: “1) Counsel for the parties are located in the forum district. 2) The
7 defendant is a large corporation whose employees often engage in travel, only one
8 or two employees will be required to travel to the deposition 3) Significant
9 discovery disputes may arise and judicial economy favors resolution by the forum
10 court or other similar concerns. 4) The nature of the claim and the relationship of
11 the parties are such that an appropriate adjustment of the equities favors a
12 deposition site in the forum district.” *Turner v. Prudential Ins. Co. of America*, 119
13 F.R.D. 381, 383 (M.D.N.C. 1988). Additionally, factors such as “the parties’
14 convenience and relative hardships to attend the designated location; and cost of
15 transportation and lost work to defendant” should be considered. *Willis v. Mullins*,
16 2006 WL 302343, *6 (E.D. Cal. 2006).

17 In the *\$160,066.98 from Bank of America* case, the court found that the
18 circumstances called for requiring the defendants to return from Pakistan to the
19 United States for the depositions. *\$160,066.98 from Bank of America*, 202 F.R.D at
20 627-28. The court decided that on balance the safety, cost, and efficiency weighed
21 in favor of holding the depositions in the United States. *Id.* Specifically, the court
22 pointed out that defense counsel was trying to “oversimplify the logistics of
23 conducting the depositions in Pakistan” because the counsel did not take into
24 account the time change for court decisions for contentions during discovery. *Id.* at
25 629. Additionally, the court found that the costs to be considered are not just that
26 of the deponents, but also those for the counsel and the deposition site. *Id.* at 628.

27 On the other hand, in *O’Sullivan v. Rivera*, the court found that the plaintiff
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1 had not presented any “exceptional circumstances” which would encourage the
2 court to force the defendant to be deposed outside of their place of residence.
3 *O’Sullivan v. Rivera*, 229 F.R.D. 187, 189 (D.N.M. 2004). The defendant showed
4 facts that the trip to New Mexico from Colorado would cause severe financial
5 hardship because he was the sole earner for his family and the missed days of work
6 would cause a hardship. *Id.* at 188. Additionally, in *Farquhar*, the court found no
7 compelling reason to conduct the deposition in the United States, because the
8 defendant was willing to be deposed in the place of his residence, the Netherlands,
9 was willing to advance the cost of the plaintiff to take the deposition, and had
10 previously been deposed successfully for other litigation in the Netherlands.
11 *Farquhar*, 116 F.R.D. at 73.

12 Defendants Davies and Little assert that a protective order is appropriate
13 because a trip from Ireland to Pullman, Washington is unnecessary. Both
14 Defendants have submitted affidavits explaining that the travel to Pullman would
15 be over 4,000 miles from their homes, and would take them away from running the
16 SLBC business in Ireland.

17 Defendants Stephenson and Stripp have filed a motion for a protective order
18 to require their depositions to be taken in Vancouver, British Columbia with the
19 underlying theme of the motion being that they are inappropriate parties to the suit.
20 Thus, Defendants Stephenson and Stripp claim that the little contact they have had
21 with Plaintiffs would make the travel to Pullman, Washington for depositions even
22 more burdensome. Additionally, both explained that they no longer are
23 directors/owners of SLBC NA because the satellite company was sold.

24 Plaintiffs oppose the depositions being conducted elsewhere based on the
25 exceptions that can be made to the general rule. First, Plaintiffs assert that the
26 expense and time that will be needed to conduct them in Ireland and Canada, which
27 would be equivalent to that of Defendants flying to the forum state. Additionally,
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1 Plaintiffs assert that tension is high between the parties and there is likely to be
2 need for judicial intervention, which will be settled easier and more efficiently if
3 the depositions were conducted in the forum state.

4 Based on the factors identified above, the Court finds that Plaintiffs have
5 made the required showing of exceptional circumstances establishing that all
6 depositions should be conducted in the United States. First, both counsel for
7 Defendants Davies and Little and Plaintiffs are located in the forum state, which
8 consequently means that the cost of transporting all of the attorneys to the
9 deponents will likely be higher than that of bringing the two Defendants to the
10 United States. Similarly, counsel for Defendants Stephenson and Stripp would
11 require roughly the same amount of time and expense to travel from their offices in
12 Seattle, Washington to either Vancouver, B.C. or Eastern Washington. In
13 conjunction with this factor, Plaintiffs' counsel in her affidavit states that Plaintiffs
14 are willing to stipulate that the only two employees of SLBC to be deposed would
15 be Defendants Davies and Little. This would vitiate the problem of continuously
16 dragging the employees of a corporation away from their work for travel to
17 depositions. Defendants Davies and Little explain that the trip from Ireland to
18 Pullman, Washington would be expensive and would take them away from their
19 work. However, Plaintiffs are the sole owners and employees of their own
20 business, and no person could take over the business while they are away for the
21 depositions. Finally, and what the Court finds to be the most important, is the
22 interest of the Court in making prompt decisions as to any disputes that may arise
23 during the depositions. Plaintiffs' counsel asserts in her affidavit that tensions are
24 very high between the parties, and there is likely to be dispute during the
25 deposition process which will require judicial intervention. The delay in decision
26 making occasioned by depositions being conducted out of the United States, and
27 possibly in different time zones, counsels towards holding the depositions here. By
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1 the same token, the technical difficulties and potential delays Plaintiffs identify
2 with video-conference depositions suggest that in-person depositions in
3 Washington are the most efficient and practicable solution. Accordingly, all of
4 these factors considered together weigh in favor of requiring the Defendants to
5 travel to the United States for the depositions.

6 Finally, the Court denies Defendant Stephenson and Stripp's Motion to
7 Strike as moot. The motion deals with two paragraphs of Plaintiffs' Declaration,
8 which Defendants argue are unsupported by personal knowledge and therefore
9 inadmissible. The Court finds that the paragraphs of the Declaration at issue are not
10 relevant to the Court's ruling on the Motions for Protective Orders, and therefore
11 denies the motion as moot.

12 Accordingly, **IT IS HEREBY ORDERED:**

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14 1. Defendants' Motions to Expedite Hearing (Ct. Recs. 25, 34, and 55) are
15 **GRANTED.**

16 2. Defendants' Motions for Protective Orders (Ct. Recs. 28 and 37) are
17 **DENIED.**

18 3. Defendants' Motion to Strike (Ct. Rec. 57) is **DENIED as moot.**

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
20 Order and forward copies to counsel.

21 **DATED** this 16th day of June, 2010.

22
23 s/Robert H. Whaley
24 ROBERT H. WHALEY
25 United States District Judge
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**ORDER DENYING DEFENDANTS' MOTIONS FOR PROTECTIVE
ORDERS * 7**